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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

WHISENANT, ETHAN C

ART UNIT PAPER NUMBER

1634

DATE MAILED: 06/13/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

## Application No.

09/833,790

## Applicant(s)

LODES ET AL.

## Examiner

Ethan C. Whisenant

## Art Unit

1634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-15 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**ELECTION/RESTRICTION**

**ELECTION/RESTRICTION**

**Claim(s) 1-15** is/are pending in the application.

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. **Claim(s) 1, 3-4, 8, 11 and 14** drawn to polynucleotides and a composition thereof, classified in, at least for example, Class 536, subclass 23.1.

II. **Claim(s) 2, 7 and 11** drawn to polypeptides and a composition thereof, classified in, at least for example, Class 530, subclass 350.

III. **Claim(s) 5, 11 and 15** drawn to antibodies and a composition thereof, classified in, at least for example, Class 530, subclass 387.1.

IV. **Claim(s) 6**, drawn to a method of detecting the presence of cancer in a patient using the polypeptide of Claim(s) 2, classified in, at least for example, Class 514, subclass 7.1.

Va. **Claim(s) 9**, drawn to a method for stimulating and/or expanding T cells specific for a tumor protein comprising contacting T cells with the polypeptides according to Claim(s) 2, classified in, at least for example, Class 514, subclass 2.

Vb. **Claim(s) 9**, drawn to a method for stimulating and/or expanding T cells specific for a tumor protein comprising contacting T cells with the polynucleotides of Claim(s) 1, classified in, at least for example, Class 514, subclass 44

Vc. **Claim(s) 9**, drawn to a method for stimulating and/or expanding T cells specific for a tumor protein comprising contacting T cells with antigen presenting cells expressing a polypeptide according to Claim(s) 1 (??), classified in, at least for example, Class 514, subclass 2

VI. **Claim(s) 10 and 11** an isolated T cell population and a composition thereof, classified in at least for example Class 435, subclass 325.

**VIIa. Claim(s) 12**, drawn to a method of stimulating an immune response in a patient wherein the patient is administered polypeptides according to Claim(s) 2, classified in at least for example Class 514, subclass 2.

**VIIb. Claim(s) 12**, drawn to a method of stimulating an immune response in a patient wherein the patient is administered polynucleotides according to Claim(s) 2, classified in at least for example Class 514, subclass 44.

**VIIc. Claim(s) 12**, drawn to a method of stimulating an immune response in a patient wherein the patient is administered antibodies according to Claim(s) 5, classified in at least for example Class 514, subclass 2.

**2.** The inventions are distinct, each from the other for the following reasons.

The polynucleotide and polypeptide products of groups I and II can be shown to be distinct, each from the other. Although the polynucleotides and polypeptides are related as the claimed polynucleotide is asserted to encode the claimed polypeptide, they are distinct inventions because they are physically and functionally distinct chemical entities, and the protein product can be made by another and materially different process, such as by synthetic peptide synthesis or purification from the natural source. Further, the DNA may be used for processes other than the production of the protein as evidenced by the methods of at least groups Vb and VIIb. The antibody product of group III and the protein product of group II are structurally and functionally distinct from each other and from the polynucleotides of group I. The methods of groups IV-Vc and VIIa-VIIc can be shown to be distinct, each from the other, as they have different starting materials, method steps, and/or goals. These methods can be shown to be distinct from the products of groups I-III and VI, as each of these products is either not used in the methods or has uses unrelated to these methods. For example, the polynucleotides can be used to make the protein or as probes, the polypeptides can be used to make antibodies, and the antibodies can be used in methods of purification. Each group would require a non-coextensive literature search.

**SEQUENCE ELECTION REQUIREMENT APPLICABLE TO ALL GROUPS**

**3.** In addition, each Group detailed above reads on patentably distinct SEQ ID numbers. Each sequence is patentably distinct because the sequences are structurally unrelated sequences, and a further restriction is applied to each Group. Applicant must further elect a single SEQ ID NO. (See MPEP

803.04). Applicant must specifically identify the SEQ ID NO: elected. Applicant is advised that examination will be restricted to only the elected SEQ ID NO. and should not to be construed as a species election.


4. Because these inventions are distinct for the reason(s) given above and the necessity for non-coextensive literature and sequence searches, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

► A fully responsive reply will comprise the election of both a group, and a particular sequence to be examined.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ethan Whisenant, Ph.D. whose telephone number is (703) 308-6567. The examiner can normally be reached Monday-Friday from 8:30AM -5:30PM EST or any time via voice mail. If repeated attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, W. Gary Jones, can be reached at (703) 308-1152.

The fax number for this Examiner is (703) 746-8465. Before faxing any papers please inform the examiner to avoid lost papers. Please note that the faxing of papers must conform with the Notice to Comply published in the Official Gazette, 1096 OG 30 (November 15, 1989). Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-0196.

  
**ETHAN C. WHISENANT**  
**PRIMARY EXAMINER**